IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.790 OF 2004
IN
NOTICE OF MOTION NO.1544 OF 2004
IN
S.C.SUIT NO.1836 OF 2004

Husainali M. Kapadia).. Appellant
(Org.Defendant)

Versus

Prakashchand S. Shah).. Respondent
(Org.Plaintiff)

Mr.P.K.Dhakephalkar with Mr.Pradeep Ramchandani for the Appellant.

Mr.R.S.Jadhav for the Respondent.

Mr.Salvi for the Notary.

CORAM: SMT.NISHITA MHATRE, J.
DATED: 3RD NOVEMBER 2004

P.C.:

. This Appeal From Order has been filed against the order of the trial Court granting injunction in favour of the Plaintiff-Respondent. The genuineness of three documents, namely, (i) Agreement of Sale, (ii) Power of Attorney and (iii) Declaration all dated 7th August 1998 has been questioned. These documents are purported to have been signed by the Appellant who denies his signature. The trial Court had sent the documents for examination by a handwriting expert appointed by it. The handwriting expert i.e. the Additional Chief State Examiner of Documents, C.I.D. Crime Maharashtra State, Mumbai has found that the signatures on these documents are not those of the Appellant.

2. The Suit for injunction has been filed by the Respondent claiming that he was originally in possession of 100 sq.ft. of the suit premises under leave and licence agreement. According to the Plaintiff, by virtue of these questionable documents, he is now in possession of an area of 250 sq.ft. since the Appellant had "sold" the suit premises to him in the year 1998. According to the Appellant, these premises are admittedly tenanted premises and, therefore, a sale of such premises is prohibited when the landlord is not in the picture. The trial Court has not considered the report of the handwriting expert. It appears that the Respondent sent the xerox copies of the same documents to another handwriting expert who gave a contrary opinion.

3. This Court vide order dated 13th September 2004 had directed the Notary M.V.Shinde to remain present in Court and to produce registers maintained by him showing notarisation of the document i.e. Agreement of Sale dated 7th August 1998. The Notary has not produced the registered till today despite an undertaking given to this Court, by stating that he is unable to make a thorough search in view of his wife’s illness. A subsequent order was passed on 20th October 2004 directing the Notary to produce registers. Till today no registers have been produced. In fact, the Notary is not present in Court today and is represented by his

Advocate. If according to his Advocate the Notary has diligently searched for the registers and he is unable to find them for over a period of three month, then it is obvious that the documents may not be genuine. The conduct and attitude of the Notary needs to be deprecated in the strongest terms. A Notary is an officer of the Court and therefore must obey the orders of the Court and comply with the undertaking given by him. The Notary will produce the relevant registers before the trial Court within four weeks from today.

4. When the Plaintiff himself has stated that he was originally in possession of 100 sq.ft. of the suit premises and is in possession of 250 sq.ft. by virtue of an agreement of sale purportedly signed by the Defendant, the Plaintiff would have no right over the rest of the suit premises on the basis of these questionable documents. In my view, it would be appropriate to appoint a Court Receiver since the premises should not be wasted and the Plaintiff should not be permitted to enjoy possession of the premises on the basis of documents which are questionable in an unrestricted manner. It is true that normally the Court Receiver would not be appointed unless a prayer for appointment of a Court Receiver has been made. As held by this Court in *Mulji Umershi Shah* vs. *Paradisia Builders Pvt. Ltd. and others*, **1998 (1) ALL MR 36**, the Court is not powerless to pass appropriate orders for appointment of a Receiver

without either of the parties making such an application while rejecting an application for temporary injunction. However, there is no doubt that such a power has to be exercised in exceptional cases. In the present case the trial Court has erred in granting temporary injunction in favour of the Plaintiff. I am, therefore, of the view that such a power needs to be exercised in order to protect the interest of both parties.

5. In view of this, the Court Receiver, High Court, Bombay to take symbolic possession of the suit premises situated at 49/51, Ahmed Building, First Floor, Room No.14, K.M.Sharma Marg (Lohar Chawl), Mumbai 400002. The Court Receiver may fix the royalty and may appoint the Plaintiff as agent of the Court Receiver by signing an agency agreement on the usual terms and conditions.

5. Appeal From Order disposed of accordingly.

6. In view of the Appeal From Order being disposed of, nothing survives in Civil Application No.1103 of 2004 and the same is disposed of accordingly.

7. Mr.Jadhav seeks stay of this order. Stay refused.

8. The Suit has already been expedited by the trial Court and, therefore, it is expected that the trial Court will hear and dispose of the matter as expeditiously as

possible.

9. Parties and Court Receiver to act on an authenticated copy of this order.